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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,527	03/29/2004	Fred Naval Desai	8768MD2	1921
27752 7590 01/16/2008 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION - WEST BLDG. WINTON HILL BUSINESS CENTER - BOX 412 6250 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 01/16/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/811,527

Applicant(s)

DESAI ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,6,9,10,12,13 and 15-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,6,9,10,12,13 and 15-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/10/07, 12/18/07.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments, see Remarks, filed November 8, 2007, with respect to the rejection of claims 1-35 under 35 U.S.C. 112 have been fully considered and are persuasive. The rejection of claims 1-35 under 35 U.S.C. 112 has been withdrawn.
2. Applicant's arguments filed November 8, 2007 have been fully considered but they are not persuasive.
3. With respect to arguments regarding the rejection of claims 1, 2, 5, 6, 9, 10, 12, 13, 15-27 and 28-35 under 35 U.S.C. 102 as anticipated by Odorzynski: Applicant argues that Odorzynski does not teach or suggest an elastomeric composition applied either directly or indirectly to an elastic component via printing. This is not found persuasive because the elastomeric composition is a hot melt adhesive activated only by heating the adhesive to the melt point, which is substantially identical to the melt point of backsheet 12 because they are of similar or identical polymeric origin. Thus the elastic component, backsheet 12, is also melted in the immediate vicinity of the elastomeric members made of the elastomeric composition. In light of the melting, the elastomeric composition is considered herein to partially penetrate the substrate to which it is applied, the backsheet 12. Since any printing method is accomplished only by penetrating a substrate with a substance, e.g. ink or adhesive, the partial penetration of the backsheet by the elastomeric composition constitutes a direct application of the elastomeric composition by a printing method as is required in amended claim 1. Applicant further argues with respect to amended claim 1 that Odorzynski does not teach two differing elastomeric members that are parallel or non-parallel with respect to one another in a single component. This is not found persuasive. It is noted that the features upon which applicant relies (i.e., how

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the two elastomeric members differ) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Since applicant has not set forth in claim 1 how the members differ, the members taught by Odorzynski already differ in that they are two physically different stripes of elastomeric composition that are parallel, as Odorzynski teaches slot coating. Thus the elastomeric members of Odorzynski meet this limitation of claim 1.

4. Applicants' arguments with regard to dependent claims 2, 16, 18-22, 28 and 29 under 35 U.S.C. 103 over Odorzynski, alone or in combination with Himes, have been fully considered but are not persuasive as Applicants' arguments depend entirely on Applicants' arguments regarding the rejection of claim 1, which have been addressed *supra*.

#### ***Information Disclosure Statements***

5. The information disclosure statement (IDS) submitted on December 10, 2007 was filed after the mailing date of the non-final action on July 9, 2007. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

6. The information disclosure statement filed December 18, 2007 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because a legible copy of the sole reference disclosed, a foreign reference, has not been provided. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of

filing the statement, including all certification requirements for statements under 37 CFR 1.97(e).  
See MPEP § 609.05(a).

***Claim Rejections - 35 USC § 102***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claims 1, 5, 6, 9, 10, 12, 13, 15, 17 and 23-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Odorzynski et al (U.S. Patent No. 6,245,050).

With respect to **Claims 1,5,10**: Odorzynski teaches diaper 10 comprising backsheet 12, topsheet 14 and absorbent core 16. Elastomeric hot melt adhesive is applied to at least any one of the components of diaper 10, e.g. backsheet 12. The adhesive is applied via slot coating and therefore forms a continuous geometric pattern of rectilinear or curvilinear stripes on the diaper component substrate with a predetermined spacing between stripes. The backsheet 12 is a nonwoven thermoplastic film and the adhesive is an elastomeric hot melt adhesive of substantially identical polymeric origin, the adhesive, activated only by melting, would then cause temporary melting of the backsheet of similar or identical material in the immediate vicinity of the bonding point, and would partially penetrate said substrate. This partial penetration of the substrate constitutes a printing method for applying the elastomeric composition to the substrate, as penetration of a substance onto a substrate is how printing of any substrate is achieved. The elastomeric members, i.e. the rectilinear stripes with a predetermined spacing therebetween, are necessarily parallel with respect to each other in the elastic component, i.e. the substrate, as the elastomeric members partially penetrate the substrate and are considered herein to be located in the elastic component substrate.

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With respect to **Claims 8,9**: Odorzynski teaches an elasticized area width of 1.27-7.62 mm and a thickness of 2.54 –25.4 mm. (Col. 6, lines 52-58)

With respect to **Claim 12**: Since Odorzynski teaches slot coating, the at least two elements differ in their spacing from adjacent elements, i.e. the spacing between adjacent elements in the machine direction is less than the spacing between adjacent elements in the cross direction.

With respect to **Claim 13**: Odorzynski teaches strands or ribbons of the adhesive film that are applied to define an elasticized area, therefore the strands must overlap to form boundaries and a continuous elasticized area within the boundaries. (Col. 6, lines 21-27)

With respect to **Claim 15**: Odorzynski teaches waist elastics 38, leg cuffs 36 and fastening tabs 40 manufactured from the same adhesive film composition, therefore a component of diaper 10 having the elastic composition therein has an additional elastic material that is capable of being manufactured from an alternate suitable elastomeric adhesive.

With respect to **Claim 17**: Odorzynski teaches applying the elastic adhesive composition to at least one component of diaper 20. (Col 5, lines 49-51)

With respect to **Claims 23,24**: Odorzynski teaches that backsheet 12 is comprised of a nonwoven polyethylene web. (Col. 2, lines 35-38)

With respect to **Claim 25**: Odorzynski teaches that the component of the diaper containing the adhesive is necked. (Col. 6, lines 1-7)

With respect to **Claims 26,27**: Odorzynski teaches the elastic adhesive in film form sandwiched between the topsheet and backsheet to form an elasticized area. (Col. 5, lines 63-67)

With respect to **claim 30**: The thickness of at least one of the elastomeric areas taught by Odorzynski varies from one part of the member to another. This argument is based upon Odorzynski's teaching that the elastomeric adhesive is applied in the form of a film having a range of thicknesses and that the elasticized areas contract to gather the components to which they are attached, which necessarily causes a variation in thickness. (Col. 6, lines 28-31, 50-58)

With respect to **claim 31**: The thickness is considered herein to vary discretely, in areas corresponding to the gathers created.

With respect to **claim 32**: Diaper 10 further comprises a plurality of first elastomeric members 46 that are parallel to one another and a plurality of second elastomeric members 44 that are parallel to one another, wherein the plurality of first elastomeric members and the plurality of second elastomeric members are non-parallel with respect to each other. (Fig. 2, Col. 5, lines 40-45)

With respect to **claim 33**: The plurality of first elastomeric members 46 and the plurality of second elastomeric members 44 differ in differing width dimensions between said first and second elastomeric members 46,44. (Fig. 1)

With respect to **claim 34**: The plurality of first elastomeric members 46 and the plurality of second elastomeric members 44 are perpendicular with respect to each other. (Fig. 1)

With respect to **claim 35**: The plurality of first elastomeric members 46 and the plurality of second elastomeric members 44 are applied in a single step continuous process. (Col. 5, lines 46-67)

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claim 28 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Odorzynski ('050).

With respect to **claim 28**: Odorzynski teaches slot coating as a method of printing any component of diaper 10, e.g. backsheet 12, and therefore does not teach any of the methods set forth in claim 28. However, the limitation of claim 28 contains product-by-process claim language. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process."

*In re Thorpe*, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). See also MPEP § 2113. The burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir. 1983)



With respect to **claim 29**: Odorzynski teaches an elastomeric hot melt pressure sensitive adhesive, which includes polyurethane adhesives, adhesives set forth in applicant's disclosure as a material for the claimed adhesive. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim (in this case, an absorbent article having an elastomeric member) except for a property or function (in the present case, the melt viscosity of the elastomeric member) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

11. Claims 16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski ('050).

With respect to **Claim 16**: Odorzynski teaches selecting the viscosity of the adhesives that can involve mixing adhesives as well as heating them. Odorzynski does not explicitly teach two different adhesives, however Odorzynski does teach applying the adhesives either by spray coating or film forming (Col. 6, lines 13-20) which would allow the application of different elastic adhesive compositions to one substrate. Examiner asserts therefore that it would be obvious to modify the adhesive area taught by Odorzynski so as to be comprised of two different adhesive compositions applied in two different patterns.

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With respect to **Claims 18,19,20,22**: Odorzynski does not explicitly teach different elastic adhesives disposed on different components of diaper 10. However, since Odorzynski teaches various application methods for the elastic adhesive composition, various suitable materials for the composition itself, and teaches applying an adhesive to at least one component of diaper 10 (e.g. fastening tabs 40 to topsheet 14), it would be obvious to one of ordinary skill in the art to apply different adhesives in different patterns to different components of diaper 10, said differing adhesives exhibiting different elastic properties.

With respect to **Claim 21**: Fastening tabs 40 comprising an elastic adhesive form a right angle with topsheet 14 containing an elastic adhesive. (Fig. 1)

12. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Odorzynski ('050) in view of Himes (U.S. Patent No. 5,304,599).

With respect to **Claim 2**: Odorzynski does not teach a percent set for the elastomeric adhesive. Himes teaches an extrudable elastomeric composition including an elastomeric polymer and a tackifying resin having a percent set of 9%, which falls within the claimed range. ('599, Table 4). Himes teaches that this composition is suitable for extrusion onto an elastic sheet, therefore it would be obvious to substitute the composition taught by Himes for the adhesive composition as taught by Odorzynski so as to have a backsheet with the adhesive composition therein having a percent set of 9% as taught by Himes with a reasonable expectation of success.

***Conclusion***

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

January 10, 2008

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Taly', is written over the printed name and title of the examiner.